IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

First Appeal No.388/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. : Court's or Judge's orders

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CORAM : A.P. Lavande, J.
Dated : December 14, 2006

Mr. Gordey, Advocate upon taking instructions from the appellant no.2 who is present in the court and who has been identified by Advocate Gordey seeks leave to withdraw this appeal with liberty to file an application under Order IX Rule 13 of the Code of Civil Procedure before the trial Court. Learned counsel states that the appellants will file such an application within a period of three weeks. He further submitted that till such application is decided, the execution of impugned decree be stayed. The prayer for stay of the decree has been opposed by Mr. Chandurkar, learned Senior counsel for the respondent.

Having perused impugned judgment and having considered the submissions made by learned counsel, I am inclined to grant permission to withdraw this first appeal with liberty to file an application under Order IX Rule 13 of the Code of Civil Procedure within a period of three weeks from today. If such an application is filed, the trial Court shall decide the application on its own merits including the issue of maintainability of such an application within a period of eight weeks from the date of the application. The execution of the impugned decree is stayed for a period of 12 weeks from today, subject to the following conditions:-

1. The appellants file an application under Order IX Rule 13 of the Code of Civil Procedure within a period of three weeks.

2. The appellants shall not change the nature of the suit property till the application is decided.

3. The appellants shall not create any encumbrance or third party right in respect

of the suit property till the application is decided.

It is made clear that I have not expressed any opinion on merits and the trial Court shall decide the application, if any, filed by the appellants on its own merits.

Appeal is disposed of in the aforesaid terms.

C.A. Nos.3817/06

In view of withdrawal of the first appeal, nothing survives in the application. Consequently, the application stands dismissed. C.A. Nos.3818/06 and 3819/2006 In view of the order passed today disposing of the appeal, nothing survives in the application. Consequently, the application stands dismissed.

JUDGE

A.